

Domestic & Foreign Corporations – reports, fees, occupation taxes

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21-301 Domestic corporations; biennial report and fee; procedure.

(1) Each corporation organized under the laws of this state, for profit, shall make a report in writing to the Secretary of State, as of January 1, of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The signature may be digital or electronic if it conforms to section 86-611. The report and biennial fee shall be submitted to the Secretary of State. The report and fee shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and biennial fee conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report or fee does not conform, the Secretary of State shall not file the report or accept the fee but shall return the report and fee to the corporation for any necessary corrections. A correction or amendment to the biennial report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent either by United States mail or electronically transmitted to each corporation for which a report and fee as described in this section has not been received as of March 1. The notice shall state that the report has not been received, that the report and fee are due on March 1, and that the corporation will be dissolved if the report and proper fee are not received by April 15.

Source Laws 1913, c. 240, § 1, p. 745; R.S. 1913, § 761; C.S. 1922, § 679; C.S. 1929, § 24-1701; R.S. 1943, § 21-301; Laws 1967, c. 101, § 1, p. 309; Laws 1969, c. 124, § 1, p. 567; Laws 1982, LB 928, § 6; Laws 2002, LB 989, § 1; Laws 2003, LB 524, § 1; Laws 2006, LB 647, § 1; Laws 2008, LB 379, § 1. July 18, 2008

Intention of Legislature was to place domestic and foreign corporation upon an equality as regards tax. State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929).

21-302 Domestic corporations; biennial report; contents.

The biennial report required under section 21-301 from a domestic corporation subject to the Business Corporation Act shall show:

- (1) The exact corporate name of the corporation;
- (2) The street address of the corporation's registered office and the name of its current registered agent at that office in this state. A post office box number may be provided in addition to the street address;
- (3) The street address of the corporation's principal office;
- (4) The names and street addresses of the corporation's directors and principal officers, which shall include the president, secretary, and treasurer;
- (5) A brief description of the nature of the corporation's business;
- (6) The amount of paid-up capital stock; and
- (7) The change or changes, if any, in the above particulars made since the last biennial report.

Source Laws 1913, c. 240, § 2, p. 745; R.S.1913, § 762; C.S.1922, § 680; C.S.1929, § 24-1702; R.S.1943, § 21-302; Laws 1967, c. 101, § 2, p. 309; Laws 1995, LB 109, § 195; Laws 2003, LB 524, § 2; Laws 2008, LB379, § 2. July 18, 2008

Cross Reference

Business Corporation Act, see section 21-2001.

21-303 Domestic corporations; occupation tax; fees; amount; stock without par value, determination of amount.

(1) At the time of filing the report under section 21-301 each even-numbered year, it shall be the duty of every corporation for profit, and registered in the office of the Secretary of State on January 1, whether incorporated under the laws of this state or incorporated under the laws of any other state when such corporations have domesticated in this state, to pay to the Secretary of State a biennial fee for each even-numbered calendar year beginning January 1, which fee shall be due and assessable on such date and delinquent if not paid on or before April 15 of each even-numbered year.

(2) The biennial fee shall be as follows: When the paid-up capital stock of a corporation does not exceed ten thousand dollars, a fee of twenty-six dollars; when such paid-up capital stock exceeds ten thousand dollars but does not exceed twenty thousand dollars, a fee of forty dollars; when such paid-up capital stock exceeds twenty thousand dollars but does not exceed thirty thousand dollars, a fee of sixty dollars; when such paid-up capital stock exceeds thirty thousand dollars but does not exceed forty thousand dollars, a fee of eighty dollars; when such paid-up capital stock exceeds forty thousand dollars but does not exceed fifty thousand dollars, a fee of one hundred dollars; when such paid-up capital stock exceeds fifty thousand dollars but does not exceed sixty thousand dollars, a fee of one hundred twenty dollars; when such paid-up capital stock exceeds sixty thousand dollars but

does not exceed seventy thousand dollars, a fee of one hundred forty dollars; when such paid-up capital stock exceeds seventy thousand dollars but does not exceed eighty thousand dollars, a fee of one hundred sixty dollars; when such paid-up capital stock exceeds eighty thousand dollars but does not exceed ninety thousand dollars, a fee of one hundred eighty dollars; when such paid-up capital stock exceeds ninety thousand dollars but does not exceed one hundred thousand dollars, a fee of two hundred dollars; when such paid-up capital stock exceeds one hundred thousand dollars but does not exceed one hundred twenty-five thousand dollars, a fee of two hundred forty dollars; when such paid-up capital stock exceeds one hundred twenty-five thousand dollars but does not exceed one hundred fifty thousand dollars, a fee of two hundred eighty dollars; when such paid-up capital stock exceeds one hundred fifty thousand dollars but does not exceed one hundred seventy-five thousand dollars, a fee of three hundred twenty dollars; when such paid-up capital stock exceeds one hundred seventy-five thousand dollars but does not exceed two hundred thousand dollars, a fee of three hundred sixty dollars; when such paid-up capital stock exceeds two hundred thousand dollars but does not exceed two hundred twenty-five thousand dollars, a fee of four hundred dollars; when such paid-up capital stock exceeds two hundred twenty-five thousand dollars but does not exceed two hundred fifty thousand dollars, a fee of four hundred forty dollars; when such paid-up capital stock exceeds two hundred fifty thousand dollars but does not exceed two hundred seventy-five thousand dollars, a fee of four hundred eighty dollars; when such paid-up capital stock exceeds two hundred seventy-five thousand dollars but does not exceed three hundred thousand dollars, a fee of five hundred twenty dollars; when such paid-up capital stock exceeds three hundred thousand dollars but does not exceed three hundred twenty-five thousand dollars, a fee of five hundred sixty dollars; when such paid-up capital stock exceeds three hundred twenty-five thousand dollars but does not exceed three hundred fifty thousand dollars, a fee of six hundred dollars; when such paid-up capital stock exceeds three hundred fifty thousand dollars but does not exceed four hundred thousand dollars, a fee of six hundred sixty-six dollars; when such paid-up capital stock exceeds four hundred thousand dollars but does not exceed four hundred fifty thousand dollars, a fee of seven hundred thirty dollars; when such paid-up capital stock exceeds four hundred fifty thousand dollars but does not exceed five hundred thousand dollars, a fee of eight hundred dollars; when such paid-up capital stock exceeds five hundred thousand dollars but does not exceed six hundred thousand dollars, a fee of nine hundred ten dollars; when such paid-up capital stock exceeds six hundred thousand dollars but does not exceed seven hundred thousand dollars, a fee of one thousand ten dollars; when such paid-up capital stock exceeds seven hundred thousand dollars but does not exceed eight hundred thousand dollars, a fee of one thousand one hundred twenty

dollars; when such paid-up capital stock exceeds eight hundred thousand dollars but does not exceed nine hundred thousand dollars, a fee of one thousand two hundred thirty dollars; when such paid-up capital stock exceeds nine hundred thousand dollars but does not exceed one million dollars, a fee of one thousand three hundred thirty dollars; when such paid-up capital stock exceeds one million dollars but does not exceed ten million dollars, a fee of one thousand three hundred thirty dollars, and eight hundred dollars additional for each million or fraction thereof over and above one million dollars; when such paid-up capital stock exceeds ten million dollars but does not exceed fifteen million dollars, a fee of twelve thousand dollars; when such paid-up capital stock exceeds fifteen million dollars but does not exceed twenty million dollars, a fee of fourteen thousand six hundred sixty dollars; when such paid-up capital stock exceeds twenty million dollars but does not exceed twenty-five million dollars, a fee of seventeen thousand three hundred thirty dollars; when such paid-up capital stock exceeds twenty-five million dollars but does not exceed fifty million dollars, a fee of twenty thousand six hundred sixty dollars; when such paid-up capital stock exceeds fifty million dollars but does not exceed one hundred million dollars, a fee of twenty-one thousand three hundred thirty dollars; and when such paid-up capital stock exceeds one hundred million dollars, a fee of twenty-three thousand nine hundred ninety dollars. The minimum biennial fee for filing such report shall be twenty-six dollars. For purposes of determining the fee, the stock of corporations incorporated under the laws of any other state, which corporations have domesticated in this state and which stock is without par value, shall be deemed to have a par value of an amount equal to the amount paid in as capital for such shares at the time of the issuance thereof.

Source Laws 1913, c. 240, § 3, p. 745; R.S.1913, § 763; C.S.1922, § 681; C.S.1929, § 24-1703; R.S.1943, § 21-303; Laws 1947, c. 55, § 1, p. 185; Laws 1955, c. 63, § 2, p. 200; Laws 1965, c. 87, § 1, p. 350; Laws 1967, c. 101, § 3, p. 310; Laws 1969, c. 124, § 2, p. 568; Laws 1982, LB 928, § 7; Laws 1992, LB 719A, § 90; Laws 2003, LB 524, § 3.

Distinction between domestic and domesticated foreign corporation is recognized. *Omaha Nat. Bank v. Jensen*, 157 Neb. 22, 58 N.W.2d 582 (1953). Under former law, all occupation taxes assessed against domestic corporation for profit were a lien upon all property of corporation. *Licking v. Hays Lumber Co.*, 146 Neb. 240, 19 N.W.2d 148 (1945). Tax hereunder is in nature of franchise tax, rather than tax upon property, capital stock or business, and it is not a tax on interstate commerce. *State of Nebraska ex rel. Beatrice Creamery Co. v. Marsh*, 119 Neb. 197, 227 N.W. 926 (1929), appeal dismissed 282 U.S. 799 (1930). Paid-up capital of Nebraska corporation means amount of authorized capital stock employed in business. *State ex rel. J. I. Case Threshing Machine Co. v. Marsh*, 117 Neb. 832, 223 N.W. 126 (1929).

21-304 Foreign corporations; biennial report and fee; procedure.

(1) Each foreign corporation for profit, doing business in this state, owning or using a part or all of its capital or plant in this state, and subject to compliance with all other provisions of law shall, in addition to all other statements required by law, make a biennial report to the Secretary of State, as of January 1 of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The signature may be digital or electronic if it conforms to section 86-611. The report and biennial fee shall be submitted to the Secretary of State. The report and fee shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and biennial fee conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report and fee do not conform, the Secretary of State shall not file the report or accept the fee but shall return the report and fee to the corporation for any necessary corrections. A correction or amendment to the biennial report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent either by United States mail or electronically transmitted to each corporation for which a report and fee as described in this section has not been received as of March 1. The notice shall state that the report has not been received, that the report and fee are due on March 1, and that the corporation will be dissolved if the report and proper fee are not received by April 15 of each even-numbered year.

Source Laws 1913, c. 240, § 4, p. 748;R.S.1913, § 764;C.S.1922, § 682;C.S.1929, § 24-1704;R.S.1943, § 21-304;Laws 1955, c. 63, § 3, p. 203;Laws 1967, c. 101, § 4, p. 313;Laws 1969, c. 124, § 3, p. 571;Laws 1982, LB 928, § 8;Laws 2002, LB 989, § 2;Laws 2003, LB 524, § 4;Laws 2006, LB 647, § 2; Laws 2008, LB379, § 3.July 18, 2008

This section requires statement of how much capital is employed within and how much without the state. State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929).State only can complain of failure to conform to statutory requirements. Northwest Ready Roofing Co. v. Antes, 117 Neb. 121, 219 N.W. 848 (1928).

21-305 Foreign corporations; biennial report; contents.

The biennial report required under section 21-304 from a foreign corporation subject to the Business Corporation Act shall show:

- (1) The exact corporate name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) The street address of the foreign corporation's registered office and the name of its current registered agent at that office in this state. A post office box number may be provided in addition to the street address;
- (3) The street address of the foreign corporation's principal office;

- (4) The names and street addresses of the foreign corporation's directors and principal officers which shall include the president, secretary, and treasurer;
- (5) A brief description of the nature of the foreign corporation's business;
- (6) The value of the property owned and used by the foreign corporation in Nebraska and where such property is situated; and
- (7) The change or changes, if any, in the above particulars made since the last annual report.

Source Laws 1913, c. 240, § 5, p. 749; R.S.1913, § 765; C.S.1922, § 683; C.S.1929, § 24-1705; R.S.1943, § 21-305; Laws 1967, c. 101, § 5, p. 313; Laws 1995, LB 109, § 196; Laws 2003, LB 524, § 5; Laws 2008, LB379, § 4. July 18, 2008

Cross Reference

Business Corporation Act, see section 21-2001.

Domestic and foreign corporations are treated differently for purpose of tax. State of Nebraska ex rel. Beatrice Creamery Co. v. Marsh, 119 Neb. 197, 227 N.W. 926 (1929), appeal dismissed 282 U.S. 799 (1930).

21-306 Foreign corporations; occupation tax; investigation by Secretary of State for collection purposes.

Upon the filing of the biennial report required under section 21-304 with the Secretary of State, it shall be the duty of every foreign corporation for profit, doing business in this state, to pay to the Secretary of State a biennial fee which shall be for each even-numbered calendar year beginning January 1 and become due and assessable on March 1 of that year and become delinquent if not paid by April 15 of each even-numbered year. The fee shall be measured by the property employed by the foreign corporation in the conduct of its business in the State of Nebraska. For such purpose the property shall consist of the sum total of the actual value of all real estate and personal property employed in Nebraska by such foreign corporation in the transaction of its business. The biennial fee to be paid by such foreign corporation shall be based upon the sum so determined, and shall be considered the capital stock of such foreign corporation in this state for the purpose of the biennial fee. The schedule of payment shall be double the fees set forth in section 21-303, or any amendments thereto, except that the fee shall not exceed thirty thousand dollars, and the Secretary of State, or any person deputized by the Secretary of State, shall have authority to investigate and obtain information from such corporation or any state, county, or city official. Such officers are authorized by this section to furnish such information to the Secretary of State, or anyone deputized by the Secretary of State, in order to determine all facts and give effect to the collection of the biennial fee.

Source Laws 1913, c. 240, § 6, p. 749; R.S.1913, § 766; C.S.1922, § 684; C.S.1929, § 24-1706; Laws 1933, c. 32, § 1, p. 212; Laws 1935, c. 47, § 1, p. 172; C.S.Supp.,1941, § 24-1706; R.S.1943, § 21-306; Laws 1955, c. 63, § 4, p. 203; Laws 1965, c. 87, § 2, p.

353; Laws 1967, c. 101, § 6, p. 313; Laws 1969, c. 124, § 4, p. 571; Laws 1982, LB 928, § 9; Laws 2002, LB 989, § 3; Laws 2003, LB 524, § 6.

Occupation tax of foreign corporation is computed upon basis of paid-up capital stock employed in this state. State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929).

21-307 Repealed. Laws 1969, c. 124, § 11.

21-308 Repealed. Laws 1969, c. 124, § 11.

21-309 Repealed. Laws 1969, c. 124, § 11.

21-310 Repealed. Laws 1967, c. 101, § 14.

21-311 Fees; disposition; monthly report of Secretary of State.

The Secretary of State shall make a report monthly to the Tax Commissioner of the biennial fees collected under sections 21-301 to 21-325 and shall pay the same into the state treasury to the credit of the General Fund. The report shall include the amount of any refunds paid out under section 21-328.

Source Laws 1913, c. 240, § 11, p. 750; R.S.1913, § 771; C.S.1922, § 689; C.S.1929, § 24-1711; R.S.1943, § 21-311; Laws 1984, LB 799, § 2; Laws 2003, LB 524, § 7.

21-312 Fees; lien; notice; lien subject to prior liens.

The fees required to be paid by sections 21-301 to 21-325 shall be the first and best lien on all property of the corporation whether such real or personal property is employed by the corporation in the prosecution of its business or is in the hands of an assignee, trustee, or receiver for the benefit of the creditors and stockholders thereof. The Secretary of State may file notice of such lien in the office of the county clerk of the county wherein the personal property sought to be charged with such lien is situated and with the county clerk or register of deeds of the county wherein the real estate sought to be charged with such lien is situated. The lien provided for in this section shall be invalid as to any mortgagee or pledgee whose lien is filed, as against any judgment lien which attached, or as against any purchaser whose rights accrued, prior to the filing of such notice.

Source Laws 1913, c. 240, § 12, p. 750; R.S.1913, § 772; C.S.1922, § 690; C.S.1929, § 24-1712; Laws 1943, c. 54, § 1, p. 218; R.S.1943, § 21-312; Laws 1969, c. 124, § 5, p. 572; Laws 1988, LB 800, § 1.

Under prior statute, occupation taxes were a lien although not filed in office of register of deeds or county clerk. Licking v. Hays Lumber Co., 146 Neb. 240, 19 N.W.2d 148 (1945).

21-313 Failure to file report or pay fee; automatically dissolved, when.

If a corporation required to file the report and pay the fee prescribed in sections 21-301 to 21-325 fails or neglects to make such report or pay such fee by April 15 of

each even-numbered year, such corporation shall be automatically dissolved on April 16 of such year.

Source Laws 1913, c. 240, § 13, p. 750; R.S.1913, § 773; C.S.1922, § 691; C.S.1929, § 24-1713; R.S.1943, § 21-313; Laws 1945, c. 39, § 1, p. 195; Laws 1955, c. 63, § 7, p. 204; Laws 1967, c. 101, § 9, p. 315; Laws 1969, c. 124, § 6, p. 572; Laws 1982, LB 928, § 10; Laws 2002, LB 989, § 4; Laws 2003, LB 524, § 8.

Foreign corporation tax is computed upon the amount of its paid-up capital stock employed in Nebraska. State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929). After action has been brought in name of dissolved corporation, amendment may be allowed substituting as plaintiffs the managing directors as trustees. Weekes Grain & Live Stock Co. v. Ware & Leland, 99 Neb. 126, 155 N.W. 233 (1915). After charter has been forfeited for nonpayment of occupation tax, corporation cannot sue in corporate name. Weekes Grain & Live Stock Co. v. Ware & Leland, 99 Neb. 126, 155 N.W. 233 (1915); Havens & Co. v. Colonial Apartment House Co., 97 Neb. 639, 150 N.W. 1011 (1915).

21-314 Fees; how collected; credited to General Fund.

Such biennial fee or fees to be paid as provided in sections 21-301 to 21-325 may be recovered by an action in the name of the state and on collection shall be paid into the treasury to the credit of the General Fund.

Source Laws 1913, c. 240, § 14, p. 750; R.S.1913, § 774; C.S.1922, § 692; C.S.1929, § 24-1714; R.S.1943, § 21-314; Laws 1969, c. 124, § 7, p. 573; Laws 1988, LB 800, § 2; Laws 2003, LB 524, § 9.

21-315 Fees; collection; venue of action.

The Attorney General, on request of the Secretary of State, shall institute such action in the district court of Lancaster County, or any other county in the state in which such corporation has an office or place of business.

Source Laws 1913, c. 240, § 15, p. 750; R.S.1913, § 775; C.S.1922, § 693; C.S.1929, § 24-1715; R.S.1943, § 21-315.

21-316 Repealed. Laws 1971, LB 485, § 2.

21-317 Reports and fees; violations; annulment of charter.

If a corporation, organized under the laws of Nebraska, for profit or not for profit, required to file the report and pay the fee prescribed in sections 21-301 to 21-325, fails or neglects to make such report or pay such fee for thirty days after the expiration of the time limited by said sections, and such default is willful and intentional, the Attorney General, on the request of the Secretary of State, shall bring an action in the district court of Lancaster County, or any county in this state in which such corporation is located, to forfeit and annul the charter of such

corporation. If the court is satisfied that such default is willful and intentional, it may revoke and annul such charter.

Source Laws 1913, c. 240, § 17, p. 751; R.S.1913, § 777; C.S.1922, § 695; C.S.1929, § 24-1717; R.S.1943, § 21-317; Laws 1967, c. 101, § 10, p. 315.

Where corporation paid fee and penalty as demanded, judgment of ouster will not be sustained, though Secretary of State, through oversight, demanded less than required by law. State ex rel. Hartigan v. Sperry & Hutchinson Co., 94 Neb. 785, 144 N.W. 795 (1913).

21-318 List of corporations; duty of Secretary of State.

It shall be the duty of the Secretary of State to prepare and keep a correct list of all corporations subject to sections 21-301 to 21-325 and engaged in business within the State of Nebraska. For the purpose of obtaining the necessary information, the Secretary of State, or other person deputized by him or her, shall have access to the records of the offices of the county clerks of the state.

Source Laws 1913, c. 240, § 18, p. 751; R.S.1913, § 778; C.S.1922, § 696; C.S.1929, § 24-1718; R.S.1943, § 21-318; Laws 1988, LB 800, § 3.

21-319 Investigation by Secretary of State for collection purposes; duty of county clerk.

Any county clerk shall, upon request of the Secretary of State, furnish him or her with such information as is shown by the records of his or her office concerning corporations located within his or her county and subject to sections 21-301 to 21-325. The Secretary of State, or any person deputized by him or her for the purpose of determining the amount of fees due from such corporation, shall have authority to investigate and determine the facts showing the proportion of the paid-up capital stock of the company represented by its property and business in Nebraska.

Source Laws 1913, c. 240, § 19, p. 751; R.S.1913, § 779; C.S.1922, § 697; C.S.1929, § 24-1719; R.S.1943, § 21-319; Laws 1988, LB 800, § 4.

21-320 Repealed. Laws 1969, c. 124,§11.

21-321 Reports and fees; exemptions.

All banking, insurance, and building and loan association corporations paying fees and making reports to the Auditor of Public Accounts or the Director of Banking and Finance and all other corporations paying an occupation tax to the state under any other statutory provisions than those of sections 21-301 to 21-325 shall be exempt from the provisions of such sections.

Source Laws 1913, c. 240, § 21, p. 752; R.S.1913, § 781; C.S.1922, § 699; C.S.1929, § 24-1721; R.S.1943, § 21-321; Laws 1969, c. 124, § 8, p. 573; Laws 1988, LB 800, § 5; Laws 2003, LB 524, § 10.

21-322 Dissolution, revocation of charter; certificate required; filing; fees.

In case of dissolution or revocation of charter by action of a competent court, or the winding up of a corporation, either foreign or domestic, by proceedings in assignment or bankruptcy, a certificate shall be signed by the clerk of the court in which such proceedings were had and filed in the office of the Secretary of State. The fees for making and filing such certificate shall be taxed as costs in the proceedings and paid out of the funds of the corporation, and shall have the same priority as other costs.

Source Laws 1913, c. 240, § 22, p. 752; R.S.1913, § 782; C.S.1922, § 700; C.S.1929, § 24-1722; Laws 1943, c. 54, § 2, p. 218; R.S.1943, § 21-322; Laws 1967, c. 101, § 11, p. 315.

21-323 Domestic corporations; reports and taxes; notice; failure to pay; automatic dissolution; lien; priority.

(1) Prior to January 1 of each even-numbered year, the Secretary of State shall cause to be mailed by first-class mail to the last-named and appointed registered agent at the last-named street address of the registered office of each domestic corporation subject to sections 21-301 to 21-325 a notice stating that on or before March 1 of each even-numbered year occupation taxes are due to be paid and a properly executed and signed report is due to be filed. If occupation taxes are not paid and the report is not filed by April 15 of each even-numbered year, (a) such taxes and report shall become delinquent, (b) the delinquent corporation shall be automatically dissolved on April 16 of such year for nonpayment of occupation taxes and failure to file the report, and (c) the delinquent occupation tax shall be a lien upon the assets of the corporation subsequent only to state, county, and municipal taxes.

(2) Upon the failure of any domestic corporation to pay its occupation tax and file the report within the time limited by sections 21-301 to 21-325, the Secretary of State shall on April 16 of such year automatically dissolve the corporation for nonpayment of taxes and make such entry and showing upon the records of his or her office.

(3)(a) The Secretary of State shall automatically dissolve a corporation subject to the Business Corporation Act by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-2034.

(b) A corporation automatically dissolved continues its corporate existence but may not carry on any business, except that business necessary to wind up and

liquidate its business and affairs under section 21-20,155 and notify claimants under sections 21-20,156 and 21-20,157.

(c) The automatic dissolution of a corporation shall not terminate the authority of its registered agent.

(4) All delinquent occupation taxes of the corporation shall be a lien upon the assets of the corporation, subsequent only to state, county, and municipal taxes.

(5) No domestic corporation shall be voluntarily dissolved until all occupation taxes and fees due to or assessable by the state have been paid and the report filed by such corporation.

Source Laws 1913, c. 240, § 22, p. 752; R.S.1913, § 782; C.S.1922, § 700; C.S.1929, § 24-1722; Laws 1943, c. 54, § 2, p. 218; R.S.1943, § 21-323; Laws 1957, c. 242, § 10, p. 823; Laws 1967, c. 101, § 12, p. 316; Laws 1969, c. 124, § 9, p. 573; Laws 1971, LB 485, § 1; Laws 1982, LB 928, § 11; Laws 1995, LB 109, § 197; Laws 2002, LB 989, § 5; Laws 2003, LB 524, § 11.

Cross Reference

Business Corporation Act, see section 21-2001.

Under former law, lien of occupation taxes was not cut off by foreclosure of tax sale certificate where state was not made party defendant to suit and perfected lien. *Licking v. Hays Lumber Co.*, 146 Neb. 240, 19 N.W.2d 148 (1945).

21-323.01 Domestic corporation automatically dissolved; reinstatement; application; procedure; payment required.

(1) A corporation automatically dissolved under section 21-323 may apply to the Secretary of State for reinstatement. The application shall:

(a) Recite the name of the corporation and the effective date of its automatic dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(c) State that the corporation's name satisfies the requirements of section 21-2028; and

(d) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct and (b) that the corporation has complied with subsection (4) of this section, he or she shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the automatic dissolution and the corporation shall resume carrying on its business as if the automatic dissolution had never occurred.

(4) A corporation applying for reinstatement under this section shall:

(a)(i) Pay to the Secretary of State a sum equal to all occupation taxes delinquent at the time the corporation was automatically dissolved, plus a sum equal to all occupation taxes which would otherwise have been due for the years the corporation was automatically dissolved; and (ii) forward to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(b) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such corporation was automatically dissolved.

Source Laws 1995, LB 109, § 198; Laws 1996, LB 1036, § 1; Laws 2003, LB 524, § 12.

21-323.02 Domestic corporation automatically dissolved; denial of reinstatement; appeal.

(1) If the Secretary of State denies a corporation's application for reinstatement following automatic dissolution under section 21-323, he or she shall serve the corporation under section 21-2034 with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source Laws 1995, LB 109, § 199.

21-324 Repealed. Laws 1967, c. 101, §14.

21-325 Foreign corporations; reports and taxes; notice; failure to pay; automatic dissolution; lien; priority.

(1) Prior to January 1 of each even-numbered year, the Secretary of State shall cause to be mailed by first-class mail to the last-known address of each foreign

corporation subject to sections 21-301 to 21-325 a notice stating that on or before March 1 of each even-numbered year occupation taxes are due to be paid and a properly executed and signed report is due to be filed. If such occupation taxes are not paid and such report is not filed by April 15 of each even-numbered year, (a) such taxes and report shall become delinquent, (b) the delinquent corporation shall be automatically dissolved on April 16 of such year for nonpayment of occupation taxes and failure to file the report, and (c) the delinquent occupation tax shall be a lien upon the assets of the corporation subject only to state, county, and municipal taxes.

(2) Upon the failure of any foreign corporation to pay its occupation tax and file the report within the time limited by sections 21-301 to 21-325, the Secretary of State shall on April 16 of such year automatically dissolve the corporation for nonpayment of taxes and shall bar the corporation from doing business in the State of Nebraska under the corporation laws of the state and make such entry and showing upon the records of his or her office.

(3)(a) The Secretary of State shall automatically dissolve a foreign corporation subject to the Business Corporation Act by signing a certificate of revocation of authority to transact business in this state that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 21-20,177.

(b) The authority of a foreign corporation to transact business in this state shall cease on the date shown on the certificate revoking its certificate of authority.

(c) Revocation of a foreign corporation's certificate of authority shall not terminate the authority of the registered agent of the corporation.

(4) All delinquent corporation taxes of the corporation shall be a lien upon the assets of the corporation within the state, subsequent only to state, county, and municipal taxes. Nothing in sections 21-322 to 21-325 shall be construed to allow a foreign corporation to do business in Nebraska without complying with the laws of the State of Nebraska.

(5) No foreign corporation shall be voluntarily withdrawn until all occupation taxes due to or assessable by the state have been paid and the report filed by such corporation.

Source Laws 1913, c. 240, § 23, p. 752; R.S.1913, § 783; Laws 1921, c. 173, § 2, p. 668; C.S.1922, § 701; C.S.1929, § 24-1723; R.S.1943, § 21-325; Laws 1957, c. 242, § 11, p. 824; Laws 1967, c. 101, § 13, p. 316; Laws 1969, c. 124, § 10, p. 574; Laws 1982, LB 928, § 12; Laws 1995, LB 109, § 200; Laws 2002, LB 989, § 6; Laws 2003, LB 524, § 13.

Cross Reference

Business Corporation Act, see section 21-2001.

21-325.01 Foreign corporation automatically dissolved; reinstatement; procedure.

(1) A foreign corporation, the certificate of authority of which has been revoked under section 21-325, may apply to the Secretary of State for reinstatement. The application shall:

(a) Recite the name of the foreign corporation and the effective date of the revocation;

(b) State that the ground or grounds for revocation either did not exist or have been eliminated;

(c) State that the foreign corporation's name satisfies the requirements of section 21-20,173; and

(d) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct and (b) that the foreign corporation has complied with subsection (4) of this section, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-20,177.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

(4) A foreign corporation applying for reinstatement under this section shall:

(a)(i) Pay to the Secretary of State a sum equal to all occupation taxes delinquent as of the effective date of the revocation, plus a sum equal to all occupation taxes which would otherwise have been due for the years the foreign corporation's certificate of authority was revoked; and (ii) forward to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(b) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such foreign corporation's certificate of authority was revoked.

Source Laws 1995, LB 109, § 201; Laws 1996, LB 1036, § 2; Laws 2003, LB 524, § 14.

21-325.02 Foreign corporation automatically dissolved; reinstatement denied; appeal.

(1) If the Secretary of State denies a foreign corporation's application for reinstatement following revocation of its certificate of authority under section 21-325, he or she shall serve the foreign corporation under section 21-20,177 with a written notice that explains the reason or reasons for denial.

(2) The foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-20,177. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source Laws 1996, LB 1036, § 3.

21-326 Repealed. Laws 1967, c. 101, §14.

21-327 Repealed. Laws 1967, c. 101, §14

21-328 Fees; refund; procedure; appeal.

Any corporation paying the fees imposed by section 21-303 or 21-306 may claim a refund if the payment of such fee was invalid for any reason. The corporation shall file a written claim and any evidence supporting the claim within two years after payment of such fee. The Secretary of State shall either approve or deny the claim within thirty days after such filing. Any approved claims shall be paid out of the General Fund. Appeal of a decision by the Secretary of State shall be in accordance with the Administrative Procedure Act.

Source Laws 1984, LB 799, § 1; Laws 1988, LB 352, § 21.

Cross Reference

Administrative Procedure Act, see section 84-920.

21-329 Paid-up capital stock, defined.

For purposes of Chapter 21, article 3, the term paid-up capital stock shall mean, at any particular time, the sum of the par value of all shares of capital stock of the corporation issued and outstanding.

Source Laws 1984, LB 800, § 1; Laws 1995, LB 109, § 202; Laws 1999, LB 35, § 1.

21-330 Corporations; excess payment; refund.

Any corporation which has paid tax in excess of the proper amount of the occupation tax imposed in sections 21-301 to 21-325 shall be entitled to a refund of such excess payment. Claims for refund shall be filed with the Secretary of State

or may be submitted by the Secretary of State based on his or her own investigation. If approved or submitted by the Secretary of State, the claim shall be forwarded to the State Treasurer for payment from the General Fund. The Secretary of State shall not refund any excess tax payment if five years have passed from the date of the excess payment.

Source Laws 1991, LB 829, § 25; Laws 1992, Fourth Spec. Sess., LB 1, § 1; Laws 1993, LB 345, § 1; Laws 1995, LB 182, § 21; Laws 2003, LB 524, § 15; Laws 2006, LB 647, § 3.